

REMARKS

After entry of this Amendment, the pending claims are: claims 1-15 and 19-34. The Office Action dated July 25, 2007 has been carefully considered. Independent claims 1, 19 and 32 have been amended without prejudice. No new matter has been added. Reconsideration and allowance of the present application in view of the above Amendments and the following Remarks is respectfully requested.

In the Office Action dated July 25, 2007, the Examiner:

- rejected claims 1-14 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,936,071 to Marnay et al. ("Marnay");
- rejected claim 15 under 35 U.S.C. 103(a) as being unpatentable over Marnay in view of U.S. published patent application No. 2004/0024462 to Ferree et al. (the "Ferree Application"); and
- rejected claims 19-34 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,706,068 to Ferree (the "Ferree Patent") in view of U.S. Patent No. 6,682,561 to Songer et al. ("Songer").

Independent Claim 1

Independent claim 1 was rejected as being anticipated by Marnay. Amended independent claim 1 requires, *inter alia*, two articulating parts each having a slide surface wherein the slide surfaces are saddle-shaped and having a compound radius with at least two inflection points. It is respectfully submitted that Marnay does not disclose, teach, or suggest a saddle-shaped surface having a compound radius with at least two inflection points. Rather, Marnay discloses an intervertebral implant comprising an upper part 2, a lower part 3, and an insert member 4 wherein the upper part 2 has an underside 11 with a spherical indentation 12 for slideably contacting the spherically curved top side 25 of the insert member 4. Thus, it is respectfully submitted that Marnay discloses a pair of spherical contacting surfaces. There is absolutely no disclosure in Marnay of a saddle-shape surface having a compound radius with at least two inflection points.

Moreover, amended independent claim 1 also requires, *inter alia*, an

intervertebral implant comprising two articulating parts, each having an outermost end for contacting bone, wherein the outermost ends each include a connection element. At least one of the connecting elements including an oval recess for receiving one of the outermost ends of the adjoining articulating part; the recess being fitted with an axially terminal cavity and the outermost end of the adjacent articulating part comprises a widening so that said at least one articulating part is slideably displaceable, *in situ*, with respect to said adjoining connecting element.

It is respectfully submitted that Marnay does not disclose, teach, or suggest an articulating surface that is slideably displaceable, *in situ*, with respect to said cover plates. That is, Marnay does not disclose, teach, or suggest an articulating surface that is slidably displaceable with respect to said cover plates while in use (*i.e.*, once implanted) as required by independent claim 1. Rather, Marnay discloses an intervertebral implant comprising an upper part 2, a lower part 3, and an insert member 4 wherein the lower part 3 includes a central indentation 19 for slideably receiving the insert member 4. The insert member 4 having a detent protrusion 28 for securely engaging a detent recess 20 formed in the lower part 3 so that once inserted the position of the insert member 4 is fixed with respect to the lower part 3. Thus, it is respectfully submitted that Marnay does not disclose an oval recess sized and configured to receive the outermost end of the adjoining articulating part wherein the recess is sized and configured to permit the articulating part to be slideably displaceable, *in situ*, with respect to said adjoining connecting element.

For at least the above-identified reasons, it is respectfully submitted that Marnay does not disclose, teach or suggest all of the limitations of amended independent claim 1. Thus, it is respectfully submitted that amended independent claim 1 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 1 is respectfully requested.

Furthermore, as claims 2-14 all depend from independent claim 1, it is submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 2-14 is also respectfully requested.

Dependent claim 15

Dependent claim 15 was rejected as being unpatentable over Marnay in view of the Ferree Application. As described above, Marnay does not disclose, teach, or suggest all of the limitations of independent claim 1. It is respectfully submitted that the Ferree Application does not overcome these limitations. It should be noted that the Ferree Application was cited only for the proposition that a ceramic material could be used to make an implant. Thus, for at least the reasons identified above, it is respectfully submitted that Marnay, either alone or in combination with the Ferree Application, does not disclose, teach or suggest all of the limitations of dependent claim 15. Thus, it is respectfully submitted that dependent claim 15 is allowable over the cited prior art. Withdrawal of this rejection and allowance of dependent claim 15 is respectfully requested.

Independent Claims 19 and 32

Independent claims 19 and 32 were rejected as being unpatentable over the Ferree Patent in view of Songer.

Amended independent claims 19 and 32 require, *inter alia*, an intervertebral implant comprising a first member having a first saddle-shaped contact surface having a compound radius with at least two inflection points and a second member having a second saddle-shaped contact surface having a compound radius with at least two inflection points for contacting the first saddle-shaped contact surface of the first member.

Moreover, independent claim 19 requires, *inter alia*, an intervertebral implant comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein **the inner side of the first end plate includes a recess** and the first end of the first member is sized and configured to be received within said recess so that said first member is **moveable with respect to said first end plate even after implantation**. Similarly, independent claim 32 requires, *inter alia*, an intervertebral implant comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein **the inner side of the first end plate includes a recess** and the first end of the first member is sized and configured to be received within said recess so that said first member is **slideably displaceable, in-situ, with respect to said first end plate**.

It is respectfully submitted that the Ferree Patent does not disclose, teach or suggest a first end plate wherein the inner side of the first end plate includes a recess and a first member sized and configured to be received within said recess so that said first member is moveable even after implantation (in claim 19) or slideably displaceable, in situ (in claim 32) with respect to said first end plate. Thus, the claimed first plate and first member are more than merely "separate." They are sized and configured to permit movement in situ with respect to the first end plate.

The Ferree Patent, at best, discloses an end plate that is integrally formed with the inner side. Moreover, it is respectfully submitted that Songer does not cure this defect. Songer discloses a fusion implant comprising first and second transverse plates (20, 22) positioned on opposite sides of a tubular cage (12). The transverse plates (20, 22) being sized and configured to receive either a rod or a plate. The plates being slidably adjusted with respect to the rod or plate to permit adjustment until tightly secured. Thus, Songer discloses a fusion implant that prevents movement following implantation and thus teaches away from an implant, such as one claimed in claims 19 and 32, which promotes movement following implantation. Thus, it is respectfully submitted, there would have been no motivation for one of ordinary skill in the art to combine Songer with the Ferree Patent. Nonetheless, even if one was to make the combination, it is respectfully submitted that neither the Ferree Patent nor Songer, either alone or in combination, teach, disclose or suggest a first end plate wherein the inner side of the first end plate includes a recess and a first member sized and configured to be received within said recess so that said first member is moveable even after implantation (in claim 19) or slideably displaceable, in situ (in claim 32) with respect to said first end plate. Accordingly, for at least the above-identified reasons, it is respectfully submitted that claims 19 and 32 are allowable over the cited prior art. Withdrawal of these rejections and allowance of independent claims 19 and 32 is respectfully requested.

Furthermore, as claims 20-31 all depend from independent claim 19 and claims 33 and 34 depend from independent claim 32, it is submitted that these claims are equally allowable. Allowance of claims 20-31, 33 and 34 is also respectfully requested.

CONCLUSION

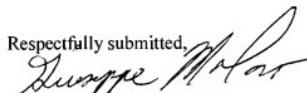
Applicants respectfully submit that all outstanding rejections have been addressed and are now overcome. Applicants further submit that all claims pending in this application are patentable over the cited prior art. Favorable reconsideration and withdrawal of those rejections is respectfully requested.

No fee, except for the \$810.00 fee in connection with the Request for Continued Examination is believed due in connection with the filing of this Response. However, if any additional fees are due the amount of such fee may be charged to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

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Respectfully submitted,


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